damages was a wholly erroneous estimate. We were also not persuaded that there was any discernible trend in previous awards for similar injuries. For these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Y.H. Cheong; Niru & Co.*

THE "THORLINA;" THE "THORLINA", OWNERS & ORS. v. KEPPEL SHIPYARD LTD.

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Thean JJ.) July 15, 1985]

[Singapore – Civil Appeal No. 47 of 1983]

Shipping Law – Bareboat charter – Contract for repair – Whether owners liable – Action in personam – Admiralty jurisdiction – High Court (Admiralty Jurisdiction) Act (Cap. 6), s. 4(4).

This was an appeal against the order of the High Court made on July 8, 1983 upon hearing of a motion brought by the appellants to set aside the Writ of Summons and Warrant of Arrest, the judgment and the said order. The principal issue was whether the appellants, Abaris Carriers Ltd. (owners of the vessel "Thorlina"), were a party to a contract for the repair of the vessel carried out by the respondents. The appellants had chartered the vessel to Denimar Shipping N.V. of Willemstad, Curacao, Netherlands Antilles ("Denimar"). The High Court held the appellants liable. On appeal:

Held, allowing the appeal: (1) the contract for the repair of the vessel was made between the respondents and Denimar. The appellants were not a party thereto and would not be liable to the respondents on the claim in an action *in personam*;

(2) the admiralty jurisdiction could not be invoked by the respondents against the appellants under section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6).

Case referred to:

(1) *The St. Merriel* [1963] P. 247, 258.

COURT OF APPEAL.

Miss Lai Siu Chiu for the appellants.
C. Arul for the respondents.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): The appellants, Abaris Carriers Limited of Nicocia, Cyprus, were at all material times the owners of the vessel, "Thorlina" (the "vessel"). By a bareboat charter dated July 9, 1982, the appellants chartered the vessel to Denimar Shipping N.V. of Willemstad, Curacao, Netherlands Antilles ("Denimar"). By an agreement dated July 16, 1982 Denimar engaged Fincham Shipping Corporation of Monrovia, Liberia ("Fincham") to provide officers and crew for the vessel, and by another agreement, called Technical Management Agreement, also dated July 16, 1982 Denimar appointed Fincham as managers of the vessel. Under the second agreement Fincham is obliged, among other things, to "man, operate, victual and supply" the vessel and to keep the vessel "at all times fully classed under present NKK provisions, in good running order and condition and have her regularly overhauled and repaired when necessary." Fincham in turn appointed Unishipping Services Limited of 1 Seething Lane, London, England ("Unishipping") as managers responsible for the crew and operation of the vessel.

Unishipping acting on behalf of the charterers, Denimar, by two letters dated August 25 and September 3, 1982 respectively invited six local shipyards to tender for the repairs of the vessel, and in response thereto the respondents successfully tendered for the same, and carried out repairs to the vessel in or about October 1982. On or about October 13, 1982 a sum of $50,000 was paid to the respondents to account of the amount then outstanding. The statements of account of the respondents were made out to Unishipping and the receipt for the part payment of $50,000 was made out to Denimar. In November 1982 a discussion on the bills of the respondents between the respective representatives of the respondents and Denimar took place and the parties then acknowledged and agreed in writing that "the net amount for payment" was $171,046: see exhibits collectively marked "LSC 4". However, no payment was made subsequently. The respondents on April 7, 1983 took out a writ *in rem* claiming for a sum of $123,151, which was later amended to $126,338.96, being the balance due for repairs carried out on the vessel, and arrested the vessel. No appearance was entered on behalf of the appellants and on July 8, 1983, upon application made by the respondents, the Court ordered that judgment in default of appearance be given for the respondents in the sum of $126,338.96 with interest and costs and that the vessel be appraised and sold by the Sheriff either by private treaty or public auction.

On August 3, 1983, the appellants applied by way of Notice of Motion for the Writ of Summons

and Warrant of Arrest to be set aside, the judgment in default of appearance to be set aside and the order made on July 8, 1983 be rescinded. The High Court upon hearing of the Motion on August 17, 1983, ordered as follows:

(a) that the appellants' application to set aside the Writ of Summons and the Warrant of Arrest be dismissed with costs;

(b) the judgment in default of appearance be set aside and the costs of obtaining such judgment be paid by the appellants to the respondents;

(c) the order of the Court dated July 8, 1983 for sale of the vessel be varied in that notwithstanding the tenders for the sale of the vessel closing on August 19, 1983, the Sheriff permit the appellants to procure a buyer for a sum higher than that of the highest bidder provided that the appellants pay to the Sheriff a sum of $15,000 on or before August 26, 1983 and the appellants procure the buyer to enter into a sale contract with the Sheriff on terms acceptable to the Sheriff on or before September 17, 1983; and

(d) the appellants pay the costs of the Motion to the respondents.

Against that order this appeal was brought and at the conclusion of the hearing of the appeal, we allowed the appeal with costs here and below; set aside the order of the High Court made on July 8, 1983 and made an order in terms of Motion and other consequential orders.

It is not in dispute that at the time when the repairs were carried out to the vessel by the respondents and at the time when the Writ was issued, the appellants were the owners of the vessel with respect to all the shares therein. However, the appellants contended and, in our view, rightly, that they were not liable *in personam* to the respondents in respect of such repairs: there was no contract made between the appellants and the respondents for the repair of the vessel and consequently, there was no liability on the part of the appellants for any part of the amount claimed by the respondents. The case *The St. Merriel*[1] cited by counsel for the appellants is clearly in point. In that case the vessel, "St. Merriel", was at the material time chartered by demise to the charterer, and while under the charter repairs were carried out by the plaintiffs in respect of which an amount was owing to them. The plaintiffs took out a writ *in rem* claiming for the amount due in respect of materials and services provided to the "St. Merriel" and arrested the vessel. The defendants applied for the writ to be set aside on the ground, *inter alia*, that at all material times the vessel was chartered by demise and the defendants were not the party who would be liable on the claim in an action *in personam*. Hewson J. held, *inter alia*, that there was no contract express or implied between the plaintiffs and the defendants and the latter were not the party liable on the claim. He said:

"I have had sufficient facts on affidavit in this case to reach a firm decision upon that matter and I ask myself on those facts, first, who would be liable in this case if the action as constituted succeeded? It would be the person who, when the cause of action arose – be he owner or the charterer or the person who is in possession or in control of the ship – made the contract for the repair by the plaintiffs. On the evidence, I am satisfied that there was no contract express or implied between the owners and the repairers. I am satisfied that there was no liability on the owners when the cause of action arose."

In this case, on the materials before us, the contract for the repair of the vessel was made between the respondents and Denimar and the appellants were not a party thereto, and would not be liable to the respondents on the claim in an action *in personam*. Accordingly, the admiralty jurisdiction cannot be invoked by the respondents against the appellants under section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6).

Order accordingly.

Solicitors: *Allen & Gledhill; C. Arul & Partners.*

WONG HONG TOY & ANOR. v. PUBLIC PROSECUTOR

[O.Cr.J. (Thean J.) August 22, 1985]

[Singapore – Criminal Motion No. 26 of 1985]

Criminal Law & Procedure – Application for transfer of two cases pending in Subordinate Court to High Court – Whether false statement a statutory declaration – Criminal Procedure Code (Cap. 113), s. 184 – Penal Code (Cap. 103), ss. 193 & 199 – Statutory Declarations Act (Cap. 13), s. 2 – Statutory Declarations Act 1835 (U.K.)

This was an application for an order that the two cases, DAC 4151 and 4152 of 1983, presently pending in the Subordinate Court, be transferred to the High Court pursuant to section 184 of the Criminal Procedure Code. In the two cases the applicants were respectively charged for having committed the offence of making a false statement in a